

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Twin Creek, LP,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 15C 0309

Decision and Order Affirming  
County Board of Equalization

### Background

1. The Subject Property is an unimproved commercial lot, with a legal description of Lot 2 Twincreek Plaza Replat VIII (1.37AC), Sarpy County Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$698,185 for tax year 2015.
3. The Taxpayer protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$279,274 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$628,367 for tax year 2015.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on July 8, 2016, at the Omaha State Office Bulding 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Steven D. Johnson and Mark Anders were present at the hearing for Twin Creek LP (the Taxpayer).
8. Dan Pittman, the County Assessor and Tim Ederer, Commercial Appraiser (the County Appraiser) were present for the County Board.

### Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
11. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”<sup>4</sup>

12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

1. The Taxpayer argued that the assessed value of the Subject Property should be reduced because of the cost of bringing the utilities onto the property from the right of way.
2. The County Appraiser stated that replatting in Bellevue is subject to strict requirements on frontage without a plan for unit development. The plan should include utility access for a back lot from the right of way.
3. The County Appraiser stated that the Subject Property had direct access to the Edgerton Drive right of way. The utilities were located in that public road and it would not be appropriate to subtract these costs from the assessed value of the Subject Property.
4. Therefore, the County Appraiser did not make an adjustment to the value of the Subject Property for the cost of bringing the utilities to the property.
5. The Taxpayer argued that the sales of the two lots adjacent to the Subject Property were not arms-length transactions and therefore should not have been utilized to determine lot values for tax year 2015.
6. The County Appraiser indicated that the sales of the two adjacent lots were not utilized by the County when determining assessed values for the 2015 tax year. He stated that

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

they were discussed because there were so few sales of vacant commercial land in Sarpy County.

7. The Taxpayer argued that the value of the Subject Property should be reduced due to several utility easements running through the Subject Property.
8. There are utility easements that intersect near the center of the Subject property creating an “X” of easements running through the subject property in addition to a separate utility easement running through the eastern section of the Subject Property.
9. The Taxpayer and the County Appraiser agreed at the hearing that the number and location of the utility easements on the Subject Property would create a negative influence on its value. However, no documents or other information were presented at the hearing to quantify the amount of this negative influence. Therefore the Commission is unable to apply this to the assessed value of the Subject Property.
10. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
11. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$628,367
Total	\$628,367

3. This Decision and Order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2015.

7. This Decision and Order is effective on September 26, 2016.

Signed and Sealed: September 26, 2016.

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Steven A. Keetle, Commissioner